

MINUTES
REGULAR MEETING OF BOARD OF LAND COMMISSIONERS
February 22, 2005, at 9:00 a.m.
Scott Hart Building Auditorium
301 N. Roberts, Helena MT

PRESENT: Governor Brian Schweitzer, Superintendent of Public Instruction Linda McCulloch, and Attorney General Mike McGrath

ABSENT: Secretary of State Brad Johnson

VIA PHONE: State Auditor John Morrison

Mr. McGrath moved for approval of the minutes from the January 18, 2004, meeting of the Board of Land Commissioners. Seconded by Ms. McCulloch. Motion carried unanimously.

BUSINESS CONSIDERED:

The Board addressed the following five timber sale requests as a package. David Groeschl, DNRC, presented the information.

205-2 HOT SPRINGS TIMBER SALE

This proposed sale is located 4 miles west of Hot Springs, Montana, and proposes to harvest from 576 acres in nine harvest units. The harvest volume is 30,419 tons or 4,746 MBF with an estimated value of \$590,324. The purpose is to treat insect and disease outbreaks, and to ensure productivity of this section in the future. Selective as well as regenerative harvest systems will be utilized. Access is across existing roads, temporary road use permits have been obtained. Approximately 4.02 miles of road construction is required and all roads will be constructed to meet BMP requirements and will be closed to all use following the project completion. Reconditioning and reconstruction of 12.4 miles of existing roads will be required. The department's archaeologist completed a record search and found no historic or cultural sites. Public involvement was solicited through legal notices and letters to interested parties. No significant environmental impacts will result from this harvest. There are no old growth stands on this harvest. An additional Forest Improvement Fee of \$10.37/ton will be charged.

205-3 CILLY BUG TIMBER SALE

This proposed sale is located 7 miles southeast of Swan Lake, Montana, and proposes to harvest from 89 acres in four harvest units. The projected volume is 2,951 tons or 600 MBF with an estimated value of \$70,528. The purpose is to remove dead merchantable trees currently infested with insects, 50% of the volume is already dead. Treatments include individual tree selection and road-right-of-way clearing. Access is across existing roads. Approximately 1.3 miles of road construction is required. Open and closed road status will remain the same. There is old growth on two of the four units, on 37½ acres. The department's archaeologist completed a record search and found no historic or cultural sites. No significant environmental impacts will result. Public involvement was solicited through newspapers and letters to interested parties. Issues and concerns were addressed in the CEA, the project's design, and in

the timber sale contract. A Forest Improvement Fee of \$13.51/ton will be assessed. This sale is in compliance with the Swan Valley-Grizzly Bear Conservation Agreement.

205-4 DEADMAN GULCH TIMBER SALE

This proposed sale is located 4 miles southwest of Missoula, Montana, and proposes to harvest from 610 acres in seven harvest units. The projected volume is 15,459 - 17,718 tons with an estimated value of \$224,134. The purpose is to reduce residual basal area stocking to 60 square feet in overstocked stands, as well as harvest trees that are stressed and/or dying from disease. Access is across an existing county road. Approximately 2.7 miles of road construction, .6 mile of reconstruction, and .4 mile of reclamation or abandonment is required. The department's archaeologist conducted a record search and found no historic or cultural sites. No significant environmental impacts will result. Public involvement was solicited through newspapers and letters to interested parties. A tour of the site was conducted and reports were aired on local T.V. stations. The main issue was on safety concerning the logging trucks and traffic. Mitigation measures were identified and incorporated into the sale. An additional fee of \$6.24/ton Forest Improvement Fee was charged.

205-5 MIDDLE FORK TIMBER SALE

This proposed sale is located 15 miles south of Lewistown, Montana, and proposes to harvest from 200 acres in four harvest units. Estimated volume is 7,000 tons or 1,000 MBF with an estimated value of \$140,000. This limited access sale involves the treatment of stands that have become infested with mountain pine beetle. Harvest treatments would return the stands towards a more pre-settlement condition, reduce stocking levels, reduce the risk of stand replacing fire, and reduce disease and insect infestation. Access is across private land. The landowner agreed to allow access for this timber sale, however, he will only allow a single specific logging contractor to conduct the harvest. The department plans to sell this timber to the contractor selected by the right-of-way owner pursuant to §77-5-201 (3)(b)(i), MCA. There will be one mile of road construction and 2.5 miles of road reconstruction. The department's archaeologist conducted a record search and found no historic or cultural sites. There are no old growth stands in this project. No significant environmental impacts will result. An additional Forest Improvement Fee of \$.31/ton will be charged.

205-6 KNOWLTON EXCHANGE TIMBER SALE

This proposed sale is located approximately 40 miles east of Miles City, Montana, and proposes to harvest from 650 acres in two units. Estimated volume is 8,753 tons or 1,167 MBF. The estimated value of the sale is \$70,024. The purpose is to harvest uneven-aged stands of ponderosa pine using a selection harvest to move the stands to a pre-fire suppression structure. Access is across existing roads, a temporary road use permit has been obtained. Approximately 4.02 miles of temporary road construction, 5.64 miles of road reconstruction, and 4.02 miles of road reclamation are required. All temporary spur roads will be reclaimed after the sale. The department's archaeologist conducted a cultural resource inventory and several sites were identified and recorded with the State Historic Preservation Office. Mitigation measures have been incorporated into the sale. There are no old growth stands in this project. No significant environmental impacts will result. A Forest Improvement Fee of \$.40/ton will be assessed.

The department requests approval to sell the foregoing five timber sale packages.

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Mr. McGrath asked on the two sales in the east, it seems like a low Forest Improvement Fee. Is that because it is in the eastern part of the state?

Mr. Groeschl said typically Forest Improvement Fees are associated with planting, pre-commercial thinning activities, and access. On the east side we don't have as many costs associated with forest improvement activities. From the Central Land Office eastward, the Forest Improvement Fees are generally a lot less than they are west of the divide where we typically have pre-commercial activities, planting, or infrastructure costs such as bridges because of the terrain and road building costs. So the fees on the east side tend to be a lot less.

Governor Schweitzer said the bull pine range seems to be decreasing in Montana. We have looked at historical maps and the bull pine seems to be decreasing probably just from factors beyond timber management. Are we confident that on this land we are timbering we will be able to get revegetated as timber?

Mr. Groeschl said yes. In all of our silvicultural prescriptions and in our State Forest Land Management Plan (SFLMP) the things we look at when we look at a silvicultural prescription is not only what we're doing to the current stand in treating the stand but also how are we trying to achieve our desired future condition for that forest. That silvicultural prescription tries to address what the specific needs of the stands are at the time, but also how do we move that stand toward a desired future condition based on some of the historical factors that are in place. Stands where we have more ponderosa pine, more shade-intolerant species, or Western larch, we try to incorporate in our silvicultural prescriptions treatments that would help retain or promote those species over a long period of time. The trend is for more shade-tolerant species to invade those sites, i.e., Douglas fir. But the trick is trying to maintain, retain, or encourage and promote the maintenance of those shade-intolerant species we are referring to like ponderosa pine. Those are factors we take into account.

Motion was made by Ms. McCulloch to approve the six timber sale requests. Seconded by Mr. McGrath. Motion carried unanimously.

205-8 RIGHTS-OF-WAY APPLICATIONS

This month there are 94 right-of-way requests for approval. There are two of interest, one is from Plum Creek (13299), and the other, a right-of-way for the school in Kalispell (#12537), has been negotiated and settled. Number 12715, 12716, 12717, 12718, 12719, 12720, 12721, 12722, 12723, 12724, 12725, 12726, 12727, 12728, 12729, 12730, 12731, 12732, 12733, 12734, 12735, 12736, 12737, 12738, 12739, 12740, 12741, 12742, 12743, 12744, 13286, 13287, and 13288 are from Fergus Electric Cooperative, Inc for overhead electric distribution lines; #12760, 12761, 12762, 12763, 12764, 12765, 12766, 12767, 12768, 12769, 12770, 12771, 12772, 12773, 12774, 12775, 12776, 12777, 12778, 12779, 12780, 12781, 12782, and 12783 are from Hill County Electric Cooperative, Inc. for overhead electric distribution lines; #12793 is from Tony Sein for a private access road for conducting farming; 12851, 12852, 12853, 12854, 12855, 12856, 12857, 12858, 12859, 12860, 12861, 12862, 12863, 12864, and 12865 are from Triangle Telephone Cooperative for buried telephone distribution lines; #12866 is from James and Diana Brady for a private access road for farming; #12869 is from Nemont Telephone Cooperative, Inc for a buried telephone distribution line; #13280 is from Merrill Klakken for a private access road for farming; #13281 is from Schaffer BIL Ranch for a private access road for farming; #13282 is from Martha Boehm and Virginia May for a private access road to single family residence; #13283 is from Joseph Heigis Trust for a private access road to a single family residence; #13284 and 13285 are from Beartooth Electric

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Cooperative for an overhead electric distribution lines; #13289 is from Dell Powell for a private access road for farming; #13290 is from Lawrence Land LLC for a private access road for farming; #13291 is from Lazy JC Ranch for a private access road for farming; #13292 is from Beaverhead County Water and Sewer for main sewer line; #13293 is from Blackfoot Telephone Cooperative for an overhead telephone distribution line; #13294, 13295, 13296, 13297, and 13298 are from Bureau of Land Management for public access roads to Little Sandy Campground; #12537 is from Flathead School District #5 for school buildings and associated grounds; #12740 is from Owl Corporation for a buried sewer line; #13299 is an "east of 83" reciprocal from Plum Creek for a perpetual non-exclusive easement for constructing, reconstructing, maintaining, repairing, and using a road or road segment for all lawful purposes.

Governor Schweitzer said for the record, he has been a member of Fegus Electric for a long time.

David Groeschl, DNRC, said one of the right-of-way packages before the Board is the "East of 83" reciprocal access agreement (#13299). As stated in summary, the agreement is between Plum Creek Timberland and DNRC. A total of 18,900 acres in the tributary area. The tributary area involves all the intermingled lands east of Highway 83 in the Swan Valley with Plum Creek and DNRC lands. Out of those 18,900 acres Plum Creek has 10,285 acres and DNRC has 8,615 acres. Miles of road granted and received total 22.98 miles in the reciprocal package. To Plum Creek, DNRC is granting 3.67 miles. DNRC is receiving from Plum Creek, 19.31 miles. Right-of-way acres total 167 acres, DNRC has 26.59 acres of that. The remaining 140.41 acres is Plum Creek right-of-way acres. Because we are receiving far more than what we are granting in this package, the state owes Plum Creek \$149,387. Of that total to be paid there are two values, the land value and the road value. The land value is the area that is occupied by the road surface and the road value is the cost of the road itself. Benefits are it provides the state permanent all lawful purpose access to our lands for not only forest management purposes, but for any other lawful purpose. Public access is granted in this package, we have motorized public access on all open roads and non-motorized public access on all closed and restricted roads. The other benefit is it is an increased asset value to the trust. It is consistent with our long term fiduciary responsibility to the trust beneficiaries. All roads, except for two small segments, are existing. Out of the 22.9 miles of road, only .78 miles would be constructed at a later date. This reduces our road density, cost and maintenance obligations by using existing roads across Plum Creek. It is consistent with our Administrative Rules and our DNRC Road Use Policy which requires us to do transportation planning with our adjacent landowners and consider access roads to minimize road construction and to anticipate probable future management needs. It allows for Plum Creek and the state to secure Conservation Easements which helps ensure long term management of those lands and it helps maintain the viability of the Swan Valley-Grizzly Bear Conservation Agreement.

Governor Schweitzer said we are applying a protocol that we use for these kind of easements between us and Plum Creek and applying that protocol ends up with us owing them \$149,387. Just so that I understand, the State of Montana is less likely to be in the business of developing our land than any private landowner in Montana, up to and including Plum Creek. So when we offer easements to someone else, it increases the value of their property, in many cases exponentially, because that allows them the potential of future development. Are we getting a fair deal? A company like Plum Creek is in the timber business but they won't always have this land in timber management. At such a time that value of the land is exponentially greater than the value of the return they are getting on timber, they will develop that land. Are they getting a better deal than the state?

Tom Schultz, DNRC, said the basic question is should we be securing rights that we may not actively try not to develop in the future. And the answer is by all means yes. The reason being, we are bringing value to the state lands. If these lands are ever appraised for exchange or conservation easement or any purpose

it doesn't mean development or pavement, we want to get all that value to state lands. Currently in Missoula we're doing a 12,000-acre land exchange with the Forest Service. Tracts that we don't have access to will be valued at 1/3 of the value that some of the accessible Forest Service tracts are. In terms of appraisal methodology people are going to look at, any appraiser in Montana is going to look at highest and best use. That will be the appraised value. So regardless of whether our intention is development or not, we want to bring that full value to state lands for any other multitude of purposes: exchanges, easements, and other things. It is in our best interest. In this particular package, we think it is a good deal for both parties in terms of the values played out. We do carry a running balance with Plum Creek for a number of right-of-way exchanges. We are trying to ramp up our access program, we are getting public access throughout this package, which we think is very important. The department has acted in the state's interest to try to ensure we do get public access whenever possible. So we do think it is a good deal.

Jerry Sorenson, Plum Creek, said I manage the land assets, primarily the real estate for Plum Creek in Montana and Idaho. Plum Creek has a very good working relationship with DNRC that has gone on for many years on these reciprocal access projects, and on other matters regarding timber management. As Mr. Groeschl indicated, this project conforms to the state road policy. It also conforms to Plum Creek's internal policy that as we manage our assets we try to manage them to enhance and protect the value, and this is what this does similar to what the state is attempting to do. There is also some permanent public access that breaks out to about 6 miles of public access on open roads and about 5 miles of public access that is walk-in access. There is no fee for the public access. That was debated within the company, but to date we have worked cooperatively with the state trying to accommodate that public interest. We are currently working with FWP on these lands, about 9,000 acres within the area, that we're working with FWP on for a Conservation Easement project. For the project to be accomplished, we will need to have these all lawful purposes for the roads to get to a value that makes sense to us to do the Conservation Easement. This is very important. Our hope is that these lands will eventually come under a Conservation Easement providing for public access for hunting and all the traditional things that have gone on on these lands as well as continued timber management. Mr. Sorenson said the state is getting a fair deal, the public access is added that makes it more fair.

Motion was made by Mr. McGrath to approve the rights-of-way package. Seconded by Ms. McCulloch. Motion carried unanimously.

205-7 OVERVIEW OF REAL ESTATE MANAGEMENT PLAN

Mary Sexton, Director DNRC, said this is an informational item and is an overview of our real estate management plan which is basically a Programmatic EIS. This has been several years in the making, and it is a fairly large document. This will be the framework used for many of our real estate transactions.

Jeanne Holmgren, DNRC, presented a power point show. She gave an overview of the Real Estate Management Programmatic Environmental Impact Statement and in doing so I am going to go over some history, the purpose of the programmatic plan, the objectives, public involvement, Alternative D – which is the preferred alternative, and then the implementation of the programmatic plan, how we intend to implement it. Real estate management has occurred on our land since statehood. We've issued rights-of-ways, land exchanges, we have leases for residential, commercial and industrial leases. Those were conducted primarily under the Forest Management Bureau and the Ag and Grazing Bureau until 1996 when it became obvious that some of our lands that were enveloped by urban and suburban areas the interest in real estate management. In order to become proactive and take advantage of the diversification of our portfolio, we formed the bureau in 1996. Also recognizing that we needed some expertise in the

field we hired some planners. To date, we have 22,000 acres of the 5.1 million acres that are managed for other uses, 15,000 to 16,000 of those acres are managed for the conservation leases. The balance of those acres are in residential, commercial and industrial use. Overall we are generating over \$157 per acre off of those uses. Some of the projects are the Lewis and Clark subdivision in Bozeman; the Hampton Inn in Great Falls; Continental Divide residential lots in Billings; Spring Prairie development in Kalispell; a land exchange for property on Rodgers Lake; Conservation Easements with FWP in the Blackfoot-Clearwater Wildlife Management Area; and we've issued a lease for a wind farm at Judith Gap in association with development of five other sections that are privately owned.

The purpose of the Programmatic EIS is to identify roles and duties and the purpose of the bureau, a systematic process towards evaluating these land use proposals and to select the preferred guide for decision making for the bureau. The objectives of the plan are to increase our revenues, comply with MEPA, provide an efficient decision making process, simplify the project evaluation, public involvement and to work with local governments. The public involvement on this PEIS began in 2001 and really kicked it off in 2004 with our new project manager. There was public comment periods and we held a couple of meetings with interested parties. This lead us to the preferred Alternative D. The Final EIS was completed in November 2004. We want to share proportionally in the growth of Montana. We know that Montana is going to grow. The residential growth will likely be achieved through sales. We are going to prioritize the development of residential growth on our urban and suburban properties. The market place recognizes that people want to buy the land. The residential properties we currently have out there are on rivers, lakes and streams. Some of the more rural properties don't have equal desirable substitute property available, so in order for us to be competitive in the marketplace, we're likely to have to sell those properties in those urban and suburban areas. If we do develop in the rural areas, we're likely to do that through leasing and continue a long term program. Commercial and industrial growth will be achieved through leasing. Through leasing we're successful in leasing some properties for conservation purposes. There is legislation that currently allows us to sell the development rights, there is another piece of legislation that would expand our ability to issue Conservation Easements. Implementation of the Alternative is through a funnel filter process and a project selection. All land uses are subject to local regulations and MEPA.

Alternative D is a blending of the five alternatives that were in the draft EIS. We are going to share proportionally with the growth of communities, improving land entitlements – we are going to waive our exemption and follow local, state, and federal regulations, and by improving our land entitlement we will be proactive in land use planning. As lands are suitable and go through the final filter process and we seek to improve our land entitlements prior to our lease or sale, we will want to try to partner with developers whenever possible to stay in the process longer to improve our position and the value of the land and have a greater degree of certainty as to the outcome. Urban lands will be prioritized first. They will be developed at urban densities in accordance with local design standards. The suburban lands will be developed in consideration of what is going on around it. Rural lands will be developed with continuous open space. We will cluster the developments and provide as much open space as financially possible. There will be significant public involvement throughout the processes.

Through 2025 residentially, if we are growing with markets and as we predict in our plan, to maintain and keep pace with the growth of communities, we will develop 9400 acres. Commercial and industrial growth, 4165 acres. Conservation doesn't look at the growth and how many acres it is going to take to accommodate the growth residentially and commercially. We are going to look at trying to market and be proactive on those lands that we have adjacent to conservation easements, national parks, national monuments, wildlife refuges, and try to achieve conservation strategies on those lands. There is no cap on conservation. Where we can develop, how we develop, and how much we can develop will be

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dependent upon our staffing, the budget, and the market. Jeanne explained the filter process used for finding suitable lands for projects. It defines a project list which will become the target for projects that we will proceed with and implement our programmatic plan. Then every five years we will take a look and see are we growing as the plan had predicted. In conclusion, Ms. Holmgren said there is Alternative D, we are going to increase our revenue, we will comply with MEPA, we have an efficient decision-making process and we're going to simplify the process, public involvement has increased, we are going to compliment local growth policies and procedures. With that, we believe that Alternative D is a logical and reasonable way to look at our trust land and how we move forward in diversifying our portfolio and capturing revenues associated with those particular developments.

Governor Schweitzer said I asked an interesting question of Tom and it was being reinforced by Plum Creek and that was that in some cases when you enhance the value of property that builds the asset value for the trust. It doesn't necessarily have to be realized by selling it, trading it, or other. The same thing is occurring in these islands of land in western Montana that happen to be owned by the State of Montana, where they are rapidly increasing in value. The question begs, if we have to move rapidly towards selling them, trading them, or developing them then it seems to be inconsistent with the answer I received about offering easements to Plum Creek and Plum Creek to us which actually just increases the asset value of the trust without any trend towards selling or developing. Here we are seeing a presentation that shows us that we need to recoup those rapidly increasing values by developing them. Is that inconsistent or not?

Mr. Schultz said I don't think it is inconsistent. I think you bring up a good point. To bring it in context, we've talked about the cash permanent fund we have. We have about \$420 million that makes up the permanent fund that we earn interest off of. The asset value currently is about \$3.6 billion. That asset value is going to increase significantly in different parts of the state. Ultimately what this Board and the department are trying to do is balance the short and long term. We try to put forward a thoughtful plan to balance while recognizing some of that short term revenue. We need to have an open door both for the folks that are concerned about the process as well as the folks who would like to have a stake in what happens on the ground. We are very concerned about asset value growing and we are concerned about selling properties too soon.

Ms. McCulloch said when we talk about the residential growth, we're still not talking about growth in enrollment in our schools in Montana. We're still in a declining enrollment situation. Folks moving into the state are usually not of child-bearing age and the folks moving out are usually of the child-bearing age.

Anne Hedges, MEIC, said the department and MEIC have not always seen eye-to-eye about development of state lands for residential, commercial, and industrial purposes. We petitioned the former Board in 1999 to begin this Programmatic EIS to try to determine how we were going to develop these properties. We've both come to the table and figured out how to get to the goal together. I think Alternative D is a tremendous step in the right direction. I appreciate the department having done this this is a vast improvement. I would like to continue the relationship of trust, I want to have a feeling of comfort that the department is proceeding in a logical and consistent manner. This programmatic EIS is a great step in the right direction, but I think we need one more step in that direction. I think we need rulemaking to verify how these details will be played out on the ground on a day-to-day basis and give us a level of comfort that these details will be consistently applied across the landscape. We can develop a set of rules that everyone is comfortable with. Rules are where the details get hammered out.

Diane Conradi, Lincoln Institute of Land Policy, said I am working west wide and have been focusing on Montana for the purpose of improving the tools that trust managers use, taking into account the unique

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obligations that trust lands impose, and coming up with unique solutions to meet those. The lands exist in communities and is used within communities. It is important to balance the uses of those lands with the communities they are a part of. I agree fully, this process the state is going through in developing the Programmatic EIS has been pretty incredible. The funnel filter and the basic suitability analysis is innovative. There aren't any western states that are doing it like Montana is and it provides a great opportunity. It builds in proactivity. In order to optimize the value that the trust can gain from that asset it is important to proactively manage. Alternative D does that. It really incorporated a lot of the comments that came in, there is neighborhood planning, working with local governments, it ensures that development on state lands is good for communities, and it includes decision making criteria. While the Programmatic EIS does provide a good framework, it is a general framework. The potential exists that this program could be proponent driven. It is unclear from this plan how that balance will be struck. What kinds of things will be looked at to determine short and long term, whether it is commercial or industrial, or rural or residential, etc. How will those decisions be made? I have a couple of suggestions. The first one is this real estate program does not have a clearly defined goal. There are implied goals, diversification of the trust portfolio, diversifying revenue streams, converting lands that are suitable for other development uses, but it is not really clear other than the acreage targets, how they will know the decisions are in the best interests of the trust. My suggestion is whether it happens internally or through rulemaking is that this real estate management program have some clearly defined goals from which success can be measured. Another thing that is not entirely clear from this plan is what role does the Real Estate Management Bureau play in regard to overall trust management. There is reference in the document to other programs, but it gets to the heart of the matter of how will the state decide among the uses. It is not clear how the real estate uses will be measured against the other types of uses, i.e., timber, farming, etc. One suggestion is to do more inventory to identify the lands that have those kinds of values. The state made a huge step forward in including in their project level analysis a market analysis. While the real estate numbers are a general trend, the value of lands will be based on location. It will be access and infrastructure. We can share the research we're doing west wide to help trust managers make informed decision on how to dispose of land and how to do it in a way that enhances communities as well as the trust. Finally, one of those details that needs to be worked out is how the state will work with the local communities. It is important to look at how different types of development impacts the cost of services. The state could develop a methodology for measuring. The other thing is collaboration. While collaboration can sometimes be painful, it will increase the likelihood for success in these planning efforts.

205-9 PUBLIC COMMENT PERIOD

Valerie Otto, Belgrade, said we were approached three weeks ago by a lessee on half a section of state land next to our home and they were trying to get easements through our property. We have denied that easement partially because of the abuse that that particular lessee has inflicted upon the land but also because of the attitude they displayed to the people on the eastern side of this half section who denied them access. And in the process I found out about what the people of Whitefish had been working on for years. I was not aware that there was a land bank, nor did I find out until the last few weeks that this parcel of land we live next to is at the top of the DNRC's proposed list of lands to be sold as a part of the land banking system. So we are in-between the real estate EIS and the agricultural land banking system. In the past couple of weeks I've been trying to get up to speed with how all of that process works. I came up on February 7 to talk in favor of SB337 and in the meantime have talked in detail with the Gallatin Valley Land Trust and the open space people in my county to explore the possibility of this half section of land being placed in a Conservation Easement as a part of that potential of the land banking system. I have enormous respect that our school system is under funded. I believe that there are most likely many

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isolated parcels around the State of Montana that would be better off sold. There are thousands of lessees who have expressed an interest in this land banking process. I am concerned that this particular parcel doesn't fit that even though in many ways it does fulfill the criteria DNRC uses in order to determine whether it will accept a lessee's proposal. There are a collection of landowners that weren't notified officially this was going on until this past Saturday, and many neighbors are not aware that this sale is impending. In Gallatin County, if this land is sold, what I as a beneficiary will soon to be looking at are hundreds of houses on a parcel of land that right now is serving an exceptional value in terms of natural resources. It provides a breeding ground for Golden Eagles, for antelope, and mule deer. In essence, we are asking for more time. We have not even been provided with four weeks worth of comment. Our deadline is March 11, on an Environmental Assessment which I understand is part of the process they are following for land banking and there is no mandate for a public meeting. As I read the MEPA document DNRC is only required to notify people who have been prior lessees for any public meeting. What I would envision is the possibility of having time to try to negotiate an alternative use for this land than having it turned into a subdivision. The property values in Gallatin County are growing and the pressure for development is like a feeding frenzy. We who are neighbors of this land would like to not be on the perimeter of that frenzy. We would like time to put that together with the open space bond monies we have in Gallatin County.

Eva Mueller, Gallatin County, said like Ms. Otto, I just got a letter on Saturday about the proposed sale of the state section next to my property. Just listening to the discussion here today I am not very comfortable about not having the details worked out about how these sales will proceed, and about only having the comment period until March 11th. I would like more time to understand the process.

Betty Baldwin, Whitefish lessee, said we have a lease on Beaver Lake. Six years ago we paid \$711 per year lease. Which I know is low. But they are doubling it and in 2008 it is worth \$5,405 a year on that land. My brothers and I own it, we are retired and one brother is a disabled veteran. We are only able to use that during the summer, none of us have a way to get in there during the winter. I think the price of the lease is high for that area. There are 18 lots there, and at one time the state wanted to put in 10 more but the quality of the lake would've gone down so that wasn't done. There are other lakes in the area and the land around them is considered timber land, you're not making any more on that than you are on an acre out in the forest. I just think it is a large amount to be charging for those leases. I'd like to see some adjustments made on it.

Wallace Bell, Great Falls, said what Ms. Baldwin has said is true. We happen to be Lot 6 on the same plot. I'd like to ask you to put yourself in our position. I came here to address the Board and say I feel that the improbability that the current cabin site and home site leases will be maintained by the citizens of Montana that have been responsible for the sustainability of these sites since their inception due to the unrealistic increase in valuation over the past five years. I am fully aware of past position by the Board regarding the Supreme Court decision on the fair market value of obtaining the leases and the percentage of appraised value. I don't feel the Supreme Court decision applied to cabin site leases only. My interpretation is that it basically applies to all state lands. The only thing I can find in the Constitution regarding full market value is from the related sale of these lands, nothing was mentioned about leasing it. My primary issue is the process used in obtaining the market value of the classified cabin sites applying 5% rate of this value, while applying a separate process to obtain lease rates on other classifications. In a Notice of Amendment to ARM 36.25.102 and 36.25.110 there were various public comments. One comment is that cabin home sites were unfairly singled out from other lease types. In Warren v. Dept. of Revenue, it states, "I question the validity of basing lease rates on market value of fee simple interest when this land is not for sale nor does not provide the same benefit as a privately-owned site." The group of sites which we hold our lease on has no public or year-round access as they are located 2.8 miles from

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the nearest county road. That 2.8 miles is across state land. There is no public utilities such as telephone or power and without the improvements provided by the lessees they would be classified as vacant lands. In this case timber land. I have provided appraisal comparison on the cabin site lease we hold from the north side of the lake. The land is appraised at \$70,000 per acre. I compared that to a site located on the east side of Beaver Lake which has an appraised value of \$664 per acre. We've listed our cabin site with a realtor for over a year. While there is interest in obtaining this lease, it quickly dissipates upon learning the annual lease rate which further indicates lack of competitive market. In 2000 the justification of raising these lease rates was to try to keep fewer sites coming on the market and driving the value down. He provided a copy of his testimony.

Governor Schweitzer asked the public to try to keep their comments brief. He said I recognize that there are many options for state lands in terms of developing them. And one of those options obviously would be trading them. Swapping where it made sense. Some of the things I've recognized with time is that in some of those islands next to urban areas the value of that land becomes substantially greater than the value for just simply timber harvest. So it is one option to trade a section of land next to a city that had timber on it for ten sections of land elsewhere. Is that possible? Is that part of the conversation?

Mr. Schultz said yes that's correct. We can trade a highly valuable section near town for ten sections out of town.

Governor Schweitzer said as I read the Constitution I note that it tells us under Article X, Section 11, p.4, that all public land shall be classified by the Board of Land Commissioners in a manner provided by law. Any public land may be exchanged for other land public or private which is equal in value and as closely as possible equal in area. I don't know that we can consistently trade, consistent with the Constitution, one section of land for ten sections. Or one section of highly valued land for fifty sections in eastern Montana for grazing land because that wouldn't be consistent with the Constitution. It tells us specifically equal in value and as closely as possible equal in area.

Mr. Schultz said the way we look at that is that the Enabling Act trumps the Constitution. The duty and purpose of these lands is to generate revenue for the beneficiaries. The way we have typically interpreted that provision in the Constitution is that the state first and foremost looks at value trying to make sure we have like value. Then realizing the acreage is secondary. For the most part we try to ensure the state is getting at least as many acres if not more than we are divesting. I understand the dilemma with the Constitution saying like acres or as close as possible. We've typically looked at it and said the state has to get as least as much if not more acreage.

Tommy Butler, Legal Counsel, DNRC, said Mr. Schultz has succinctly stated the basis of why the Constitutional provision in Article X, Section 11, p. 4, does not prohibit this Board from getting a good deal more acreage than it gave up. There is precedent for it in the past when the Board approved the Ted Turner Land Exchange where we received substantially more acreage than we gave out. One needs to interpret that specific Constitutional provision as a minimum. Mr. Schultz is correct, the Enabling Act in Section 11 contains the Board's fiduciary duty to act reasonably and prudently to increase long term value and revenue over the long term for the trust beneficiaries. That trumps the Constitution. Short answer is yes, you may obtain more acreage than you give up.

Governor Schweitzer said following that logic then it would be clear that like some western states have done, they looked at their acreage and said it might be ok for farmers and ranchers to make a 1% return or ¾% return on their land but that is not something the State of Colorado or Utah or some other state would

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be willing to do, so we'll just dispose of all this property and put it in a financial bearing account and we'll make a 6% return. Apparently the Enabling Act would tell us we can do that.

Mr. Butler said this Board has the authority to take whatever action it deems necessary to do two things: preserve the corpus of the trusts and generate revenue over the long term for the trust beneficiaries. And if it so chose it could liquidate all the land holdings. The question would be whether that is prudent over the long term.

Governor Schweitzer said I am not suggesting that but the enabling legislation would suggest we could do that. I am not sure the enabling legislation tells me that we must interpret this clause in the way it has been defined to me, but I trust the lawyer next to me.

Mr. McGrath said we have looked at this over the last five years when we were talking about the land banking provisions. Because in effect, with land banking you are not making a direct exchange but you are making an exchange over time and the theory is that it all equals out value wise. The court has not looked at that, it has not specifically looked at our land banking proposals and our rules and said we can do that. But I think that under our fiduciary responsibilities together with the emphasis on value in the Constitution that these processes will be upheld. I am fairly comfortable with that but we don't have a ruling directly.

Governor Schweitzer said as a private landowner I always considered it valuable if I can trade up. If I can trade a piece of property and get more acres, more value, but then I don't have anything in my family trust that tells me I must trade for equal value and as closely as possible, equal area. This is very specific language and I know we can interpret it in many ways.

Mr. McGrath said the intent of the Constitution clearly is that we don't do something where the trust gets hosed.

Ms. Otto said when you use the word value one of the things that keeps coming to me when I hear the words portfolio and fiduciary is that the value of the land inherent for those people who are beneficiaries and live in the State of Montana and have enormous respect for that state land as a part of our heritage in the long term is being compromised and has serious potential when DNRC who has for a long time been a protector of conservationists of all interests as a beneficiary, they are moving into the realm of a real estate broker and I think it needs to be handled with enormous care because of the difference between fiduciary values and the value of open space.

Mr. Butler said these lands were granted solely for the purpose of sale at statehood. And it was presumed that all state trust lands would be sold to fund the permanent trust and thereby fund ongoing operations for the beneficiary institutions. It wasn't until 1910 when the Montana Supreme Court ruled that, these lands could be leased instead. So the original historic intent was to sell them. Subsequently this Board has adopted a moratorium on sales choosing wisely to retain those values. And now it has to balance those short term versus long term needs of the beneficiary institutions. Those are the institutions named in the Enabling Act.

Mr. McGrath said where we are not, there is still public comment on the PEIS or is that closed?

Ms. Sexton said we asked at the staff meeting to extend the public comment. We sent out e-mails to all the people who initially comments. We have had several comment periods and we've asked for additional comment periods so we can get fully as much public comment as we can.

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Ms. Holmgren said the Board has a final EIS in front of it and the preferred alternative is Alternative D. Those issues and comments that can be incorporated into the Record of Decision is certainly something that is available. We are looking to finalize the RoD within the next couple of weeks so it can be available for the March Board meeting. The e-mail informed folks that the informational presentation at this Land Board and that the Record of Decision would come before the Board in March.

Ms. McCulloch said are we comfortable that enough time has been given for input?

Ms. Hedges said I would say yes.

Ms. Sexton said we have had additional extensions above and beyond the required. We've done another extension of public comment and e-mailed all the people who commented to see if they had additional comments.

Motion was made by Mr. McGrath to adjourn. Seconded by Ms. McCulloch.